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REFERENCE TITLE: **probation; surveillance officers; overtime; representation**

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SB 1305

Introduced by
Senator Johnson; Representatives Lopez L, Smith; Senators Chevront, Gray,
Jarrett, Verschoor; Representatives Anderson, Burges, Chase, Pearce,
Rosati

AN ACT

**AMENDING SECTIONS 23-392, 23-1411 AND 38-1101, ARIZONA REVISED STATUTES;
RELATING TO PROBATION AND SURVEILLANCE OFFICERS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-392, Arizona Revised Statutes, is amended to
3 read:

4 23-392. Overtime compensation for certain law enforcement
5 activities; option; definition

6 A. Any person engaged in law enforcement activities shall be
7 compensated for each hour worked in excess of forty hours in one work week at
8 the option of such employer at the following rates:

9 1. One and one-half times the regular rate at which such person is
10 employed or one and one-half hours of compensatory time off for each hour
11 worked if by the person's job classification overtime compensation is
12 mandated by federal law.

13 2. If by the person's job classification federal law does not mandate
14 overtime compensation, the person shall receive the regular rate of pay or
15 compensatory leave on an hour for hour basis.

16 ~~C.~~ B. Paid leave may be considered hours worked for the purpose of
17 calculating overtime.

18 ~~D.~~ C. The director of the department of public safety may establish
19 alternate work periods, in accordance with federal law, for the purpose of
20 determining overtime compensation for those employees of the air rescue
21 section of the department of public safety.

22 ~~E.~~ D. Notwithstanding subsection ~~D.~~ C of this section, an alternate
23 work period established by the director of the department of public safety
24 for the purpose of determining overtime compensation shall not exceed
25 twenty-eight days or ~~one hundred and~~ ONE HUNDRED sixty hours.

26 ~~B.~~ E. For the purposes of this section, ~~a~~ "person engaged in law
27 enforcement activities":

28 1. Means:

29 (a) A law enforcement officer as defined by section 38-1001. ~~;~~

30 (b) A peace officer as defined by section 41-1701. ~~;~~ ~~or~~

31 (c) Any security personnel responsible for controlling or maintaining
32 custody of inmates in correctional institutions maintained by ~~the~~ THIS state
33 or a county, city or town.

34 (d) A PROBATION OFFICER OR SURVEILLANCE OFFICER WHO IS EMPLOYED BY A
35 POLITICAL SUBDIVISION OF THIS STATE.

36 2. ~~The term "person engaged in law enforcement activities" shall~~ DOES
37 not include any such person employed in a bona fide executive or
38 administrative capacity as defined by the employer.

39 Sec. 2. Section 23-1411, Arizona Revised Statutes, is amended to read:

40 23-1411. Public safety employee organizational rights;
41 definition

42 A. Public safety employees serving any city, town, county or fire
43 district in this state have the right to join employee associations which
44 comply with the laws of this state and have freedom to present proposals and
45 testimony to the governing body of any city, town, county or fire district

1 and their representatives. A person shall not be discharged, disciplined or
2 discriminated against because of the exercise of these rights.

3 B. This section shall not be construed to compel or prohibit in any
4 manner any employee wage and benefit negotiations.

5 C. FOR THE PURPOSES OF THIS SECTION, "PUBLIC SAFETY EMPLOYEE" INCLUDES
6 A PROBATION OFFICER OR SURVEILLANCE OFFICER WHO IS EMPLOYED BY A POLITICAL
7 SUBDIVISION OF THIS STATE.

8 Sec. 3. Section 38-1101, Arizona Revised Statutes, is amended to read:

9 38-1101. Law enforcement officers; right to representation;
10 right to evidence on appeal; change of hearing
11 officer or administrative law judge; definitions

12 A. If an employer interviews a law enforcement officer and the
13 employer reasonably believes that the interview could result in dismissal,
14 demotion or suspension, the law enforcement officer may request to have a
15 representative of the officer present at no cost to the employer during the
16 interview. The law enforcement officer shall select a representative who is
17 available on reasonable notice so that the interview is not unreasonably
18 delayed. The representative shall participate in the interview only as an
19 observer. Unless agreed to by the employer, the representative shall be from
20 the same agency and shall not be an attorney. The law enforcement officer
21 shall be permitted reasonable breaks of limited duration during any interview
22 for telephonic or in person consultation with others, including an attorney,
23 who are immediately available.

24 B. Subsection A does not apply to an interview of a law enforcement
25 officer that is:

26 1. In the normal course of duty, counseling or instruction or an
27 informal verbal admonishment by, or other routine or unplanned contact with,
28 a supervisor or any other law enforcement officer.

29 2. Preliminary questioning to determine the scope of the allegations
30 or if an investigation is necessary.

31 3. Conducted in the course of a criminal investigation.

32 4. Conducted in the course of a polygraph examination.

33 C. In any appeal of a disciplinary action by a law enforcement
34 officer, the parties shall exchange copies of all relevant documents and a
35 list of all witnesses pursuant to the following time periods and
36 requirements:

37 1. Within three business days after the employer's receipt of a
38 written request from the law enforcement officer for a copy of the
39 investigative file that is accompanied by a copy of the filed notice of
40 appeal, the employer shall provide a complete copy of the investigative file
41 as well as the names and home or work mailing addresses of all persons
42 interviewed during the course of the investigation.

43 2. No later than five business days before the appeal hearing, the
44 employer and the law enforcement officer shall exchange copies of any
45 documents that may be introduced at the hearing and that have not previously
46 been disclosed.

1 3. No later than five business days before the appeal hearing, the
2 employer and the law enforcement officer shall exchange the names of all
3 witnesses who may be called to testify. A witness may be interviewed at the
4 discretion of the witness. The parties shall not interfere with any decision
5 of a witness regarding whether to be interviewed.

6 D. It is unlawful for a person to disseminate information that is
7 disclosed pursuant to subsection C to any person other than the parties to
8 the appeal and their lawful representatives for purposes of the appeal of the
9 disciplinary action. This subsection does not prohibit the use of the
10 information in the hearing or disclosure pursuant to title 39, chapter 1,
11 article 2.

12 E. The employer or the law enforcement officer may seek a
13 determination by the hearing officer, administrative law judge or appeals
14 board hearing the appeal regarding any evidence that the employer or the law
15 enforcement officer believes should not be disclosed pursuant to subsection C
16 because the risk of harm involved in disclosure outweighs any usefulness of
17 the disclosure in the hearing. In determining whether evidence will be
18 disclosed, the hearing officer, administrative law judge or appeals board may
19 perform an in camera review of the evidence and may disclose the material
20 subject to any restriction on the disclosure, including the closing of the
21 hearing or the sealing of the records, that the hearing officer,
22 administrative law judge or appeals board finds necessary under the
23 circumstances.

24 F. In any appeal of a disciplinary action by a law enforcement officer
25 in which a single hearing officer or administrative law judge has been
26 appointed to conduct the appeal hearing, the law enforcement officer or the
27 employer may request a change of hearing officer or administrative law
28 judge. In cases before the office of administrative hearings, on the first
29 request of a party, the request shall be granted. All other requests,
30 including any subsequent requests in cases before the office of
31 administrative hearings, may be granted only on a showing that a fair and
32 impartial hearing cannot be obtained due to the prejudice of the assigned
33 hearing officer or administrative law judge. The supervisor or supervising
34 body of the hearing officer or administrative law judge shall decide whether
35 a showing of prejudice has been made.

36 G. A party who violates subsection C or D, unless the violation is
37 harmless, shall not be permitted to use that evidence at the hearing, except
38 on a showing of good cause. The hearing officer or administrative law judge,
39 on a showing of good cause, may grant the opposing party a continuance,
40 otherwise limit the use of the evidence or make such other order as may be
41 appropriate.

42 H. This section does not preempt agreements that supplant, revise or
43 otherwise alter the provisions of this section, including preexisting
44 agreements between the employer and the law enforcement officer or the law
45 enforcement officer's lawful representative association.

46 I. For the purposes of this section:

- 1 1. "Appeal" means a hearing before a state or local merit board, a
2 civil service board, an administrative law judge or a hearing officer.
- 3 2. "Disciplinary action" means the dismissal or demotion or the
4 suspension for more than forty hours of a law enforcement officer that is
5 authorized by statute, charter or ordinance and that is subject to a hearing
6 or other procedure by a local merit board, a civil service board, an
7 administrative law judge or a hearing officer.
- 8 3. "Investigative file" means the law enforcement agency's complete
9 report and any attachments detailing the incidents leading to the
10 disciplinary action.
- 11 4. "Law enforcement officer" means:
- 12 (a) An individual, other than a probationary employee, who is
13 certified by the Arizona peace officer standards and training board. ~~or who~~
14 ~~is~~
- 15 (b) A detention officer or correction officer ~~and~~ who is employed by
16 this state or a political subdivision of this state other than a multi-county
17 water conservation district.
- 18 (c) A PROBATION OFFICER OR SURVEILLANCE OFFICER WHO IS EMPLOYED BY A
19 POLITICAL SUBDIVISION OF THIS STATE.